

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Cheryl Walter	Team: Team # 3	CCRB Case #: 200502807	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 03/15/2005 8:30 AM	Location of Incident: Avenue J between East 81st and East 82nd Streets	Precinct: 69	18 Mo. SOL 9/15/2006	EO SOL 9/15/2006	
Date/Time CV Reported Wed, 03/16/2005 9:43 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 03/16/2005 9:43 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Lashonda Dyce	27892	932152	069 PCT
2. SGT Douglas Diesso	05144	889906	069 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Osiris Smith	17271	933368	069 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Douglas Diesso	Abuse: SGT Douglas Diesso stopped the car in which § 87(2)(b) was an occupant.	
B.SGT Douglas Diesso	Force: SGT Douglas Diesso used physical force against § 87(2)(b)	
C.POF Lashonda Dyce	Force: PO Lashonda Dyce used physical force against § 87(2)(b)	

Synopsis

§ 87(2)(b) filed a complaint with the CCRB via the telephone on March 16, 2005. On March 15, 2005 § 87(2)(b) was stopped at an intersection on East 80th Street waiting to make a left-hand turn onto Avenue J when she used her cellular phone to make a call. § 87(2)(b) had been searching for a parking space near the public school where she is employed. After she made the turn, a marked police vehicle stopped her and PO Lashonda Dyce approached the driver-side while PO Osiris Smith approached the passenger-side. A third officer, SGT Diesso remained in the police vehicle. PO Dyce issued § 87(2)(b) two summonses for using a cellular phone while operating a vehicle and being an unlicensed driver. § 87(2)(b) took the summonses and continued on her way. The officers followed § 87(2)(b) for several blocks while she looked for a parking space. SGT Diesso instructed the officers to stop § 87(2)(b)'s vehicle a second time (Allegation A-substantiated). § 87(2)(b) was upset when PO Dyce approached her window and asked the officers why they had stopped her again. She also demanded that another unit be called to the scene. After a few moments, SGT Diesso exited the police vehicle to assist the other two officers. Once § 87(2)(b) refused to cooperate, PO Dyce decided to place § 87(2)(b) under arrest for disorderly conduct. When § 87(2)(b) refused to exit her vehicle when ordered to do so, SGT Diesso and PO Dyce used physical force to remove her (Allegation B & C-§ 87(2)(g)).

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b) was interviewed at the CCRB on April 7, 2005 (Encl. 7-7D). § 87(2)(b) is a § 87(2)(b).

At approximately 8:30AM on March 15, 2005, § 87(2)(b) was looking for parking on the streets surrounding the school that she works at. While stopped at a light on 80th Street, she dialed a number in her cellular phone and put it against her ear. As she did so, she noticed a marked police vehicle on her left on Avenue J and immediately put the phone on speakerphone. As the light turned green she made a left-hand turn onto Avenue J and continued looking for parking. However, the police vehicle made a U-turn in the intersection and put its lights and sirens on. She assumed that the officers had observed her on her cellular phone and immediately pulled over on Avenue J between 81st and 82nd Street. PO Dyce, who § 87(2)(b) identified from the summons, exited and walked over to her driver-side window. PO Dyce was a black female officer, approximately 5'6", with a slim build and long black hair in a ponytail. PO Dyce immediately informed § 87(2)(b) that she had been observed using a cellular phone while driving and asked for her license and registration. § 87(2)(b) stated that she hadn't technically been driving in an attempt to get off on a technicality. Still, she provided the officer with the vehicle's registration and a photocopy of her driver's license. § 87(2)(b) explained to the officer that she did not have her original driver's license because she had photocopied it and left it on the copy machine. PO Dyce went back to her vehicle for a few moments and returned to § 87(2)(b) with summonses for driving while on a cellular phone and being an unlicensed driver. § 87(2)(b) took the summonses and stated in an even tone, "Thanks for wrongfully giving me a ticket." PO Dyce did not respond and returned to her vehicle. § 87(2)(b) continued on her way, looking for a parking spot so that she could go to work. The police vehicle was directly behind her as she drove and made a left onto East 82nd Street. She observed two co-workers and curtly waved at them with an open hand still inside the vehicle. She then made another left-hand turn onto Flatland Avenue. As she did so, the police vehicle once again put its sirens and lights on. § 87(2)(b) was confused and frustrated but complied immediately, pulling over at the corner of Flatland Avenue and 81st Street.

PO Dyce once again approached the driver-side window and asked for § 87(2)(b)'s registration. Two unidentified officers also approached the vehicle and stood behind PO Dyce. PO1 was a uniformed black male in his mid 20's, approximately 5'7" with a medium build, short black hair and a round, broad face. PO2 wore a white uniformed shirt and was a tall white male in his 40's, approximately 5'11" with a medium build and thinning black hair. § 87(2)(b) questioned the officer and wanted to know why she had been pulled over a second time. PO Dyce simply demanded the vehicle's registration without explaining why they had stopped her a second time. When § 87(2)(b) refused to cooperate without being told what was happening, PO Dyce and PO2 began screaming at her, demanding that she provide her registration. § 87(2)(b) responded by demanding that another unit respond to the scene so that they could explain why she had been stopped again. PO Dyce and PO2 screamed at her to step out of the vehicle. § 87(2)(b) remained respectful and even-keeled when she stated that she was not coming out of the vehicle and that they were harassing her. PO2 then reached into her open window and opened the driver-side door. He and PO Dyce began removing § 87(2)(b) from the vehicle by pulling on each of her hands. § 87(2)(b) had her cellular phone in one of her hands while they pulled her by her hands and the phone slipped out of her grasp. § 87(2)(b) passively resisting while she stated, "Wait a minute, wait a minute." PO1 did not become directly involved but stood by. § 87(2)(b) stayed on her feet as she was pulled out of her vehicle and pushed against it. She was then handcuffed by PO1 and placed in the back of the police vehicle. § 87(2)(b) told PO2 that she worked at the school directly in front of them and pleaded with him to allow her to call the school to inform them that she would be coming in. PO2 told her not to tell him how to do his job and refused to allow her to call the school. She had wanted to use her cellular phone that had fallen somewhere on the street when they pulled her out of the vehicle. She was not allowed to retrieve the cellular phone from the street and she did not observe any of the officers recover it. § 87(2)(b) has not since seen it and stated that it was not vouchered.

PO Dyce and PO2 transported § 87(2)(b) to the 69th Precinct stationhouse while PO1 transported her vehicle to the stationhouse. During transport, § 87(2)(b) continued to ask PO Dyce and PO2 why she had been arrested. However, she was never told the reason. § 87(2)(b)'s mother came to pick her up and attempted to speak with PO Dyce regarding why her daughter had been arrested. PO Dyce stated that she had resisted arrest and now she was putting her through the system. However, PO Dyce failed to explain why § 87(2)(b) was arrested in the first place. PO Dyce also stated that § 87(2)(b) had cursed and hit her.

§ 87(2)(a) 160.50, § 87(2)(b)

§ 87(2)(b) alleged that, at the stationhouse, PO Dyce threatened to cut her shoes and forced her to remove them. She stated that she was then forced to stand in the holding cell barefoot. She also alleged that PO Dyce threatened that she had "two seconds" to decide who should be called to pick up her vehicle. Once she was released, she retrieved her vehicle. She discovered that the car battery was dead and the shoelaces to a pair of her sneakers under the driver-seat were missing. In addition, approximately \$260 in cash was removed from a purse that was inside her bag. This cash was not returned to her for a full week. These last allegations were referred to the Office of the Chief of Department (Encl. 5).

Results of Investigation

Officer Identification

PO Dyce was identified through § 87(2)(b)'s summonses and arrest paperwork. In addition, the physical description provided by § 87(2)(b) matched that of PO Dyce. PO Smith was tentatively identified as PO1 through roll call and § 87(2)(b)'s accurate physical description. SGT Diesso was tentatively identified as PO2 by the complaint report, which indicated that he was the supervisor on the scene (18-18A). The officers' identities were then confirmed by their testimonies.

Officer Statements

PO Lashonda Dyce: PO Dyce was interviewed at the CCRB on April 21, 2005 (Encl. 9-9A). On March 2005 PO Dyce was assigned to Operation Impact overtime with PO Smith and SGT Diesso from 6:00AM to 2:35PM in marked RMP #2118. Operation Impact focuses on quality of life issues.

Memobook: 8:10AM Summons served to § 87(2)(b) southbound on East 80th Street at Avenue J for use of cellular while operating a vehicle and being an unlicensed driver. § 87(2)(a) 160.50, § 87(2)(b) (8-8B).

At approximately 8:10AM PO Dyce observed § 87(2)(b) on her cellular phone at the intersection of East 80th Street and Avenue J. PO Dyce stated that when she observed § 87(2)(b) on the cellular phone, the vehicle was in motion. PO Dyce approached the driver-side window and PO Smith approached the passenger-side window. PO Dyce introduced herself and informed § 87(2)(b) that they had observed her using her cellular phone while operating the vehicle. PO Dyce then asked § 87(2)(b) for the vehicle's registration and insurance cards and her driver's license. § 87(2)(b) provided the registration, insurance card and a photocopy of her driver's license. The photocopy of the driver's license showed that it had expired. PO Dyce decided to issue § 87(2)(b) a summons for the expired license but did not explain this to Ms. § 87(2)(b). PO Dyce went back to her vehicle to run her name through the DMV database and write the summonses. When she returned with PO Smith, she issued § 87(2)(b) two summonses for operating a vehicle while using a cellular phone and unlicensed operator. It was at this point that § 87(2)(b) became "disorderly", cursing and yelling. § 87(2)(b) asked PO Dyce, "Why the fuck did you give me a summons?" PO Dyce explained to her that she could plead guilty or not guilty before she returned to her vehicle. As she was leaving she overheard § 87(2)(b) make some kind of sarcastic remark about being given the summonses but she cannot recall what specifically was said.

§ 87(2)(b) resumed driving and the officers traveled in the same direction so that they were directly behind her for approximately two minutes. As they drove behind her going northbound on East 81st Street, SGT Diesso, who had been operating the vehicle, observed § 87(2)(b) stick her hand out the window and raise her middle finger towards them. It also appeared that § 87(2)(b) was saying something but PO Dyce could not discern what. The area this occurred in is a school-zone and they were several children in the immediate area. PO Dyce made the decision to issue her a summons for disorderly conduct and stopped the vehicle a second time. As before, PO Dyce approached the driver-side window and PO Smith approached the passenger-side. SGT Diesso exited the vehicle at some point but PO Dyce was not aware of when he did so. When PO Dyce approached the vehicle, § 87(2)(b) appeared agitated and asked the officer why she had been stopped. PO Dyce explained that they had observed her display her middle the finger in public view. At this, § 87(2)(b) became very upset and refused to cooperate with the officer's instructions. She used various obscenities although PO Dyce cannot recall what she said specifically. However, § 87(2)(b) failed to either admit to or deny this accusation to the officers. PO Dyce asked for § 87(2)(b)'s driver's license but she refused to provide it. PO Dyce then instructed § 87(2)(b) to step out of the vehicle. When § 87(2)(b) refused to do so, the other two officers walked over to the driver-side door and assisted PO Dyce in removing § 87(2)(b) from her vehicle. One of the other two officers opened the door and PO Dyce grabbed her left arm and one of the other two officers grabbed right arm. § 87(2)(b) attempted to push their hands away and refused to step out of the vehicle. The two officers then pulled her out of the vehicle by her arms. After removing § 87(2)(b) from the vehicle, the officers leaned her against her own vehicle, pulled her hands behind her back and handcuffed her. § 87(2)(a) 160.50

SGT Douglas Diesso: SGT Diesso was interviewed at the CCRB on May 9, 2005 (Encl. 11-11A).

PO Osiris Smith: PO Smith was interviewed at the CCRB on May 4, 2005 (Encl. 13-13A).

After observing § 87(2)(b) use her cellular phone while operating her vehicle at the corner of Avenue J and East 80th Street the officers made the decision to stop the vehicle and issue her a VTL summons. SGT Diesso made a U-turn on Avenue J and stopped § 87(2)(b)'s vehicle on Avenue J between East 81st Street and East 82nd Street. PO Dyce approached the driver's side and PO Smith approached the passenger side of § 87(2)(b)'s vehicle while SGT Diesso remained in the RMP. Because the passenger-side window was closed PO Smith could not hear much of the conversation. From what PO Smith and SGT Diesso could observe, PO Dyce was acting in a calm and courteous manner. PO Smith stated that both § 87(2)(b) and PO Dyce spoke at conversational level and did not raise their voices high enough for him to hear what was being said. After PO Dyce issued § 87(2)(b) the VTL summonses, the two officers returned to the RMP.

As the officers were walking away SGT Diesso observed § 87(2)(b) stick her head out of the window and yell but he could not discern what was being said. She then immediately proceeded on her way.

The officers unintentionally drove in the same direction as § 87(2)(b). After making an illegal left-hand turn at the next intersection, the officers observed § 87(2)(b) stick her hand out of the driver-side window and direct her middle finger towards them. The officers' vehicle was directly behind § 87(2)(b)'s vehicle when the officers observed § 87(2)(b)'s obscene gesture. The officers stated that she kept her middle finger directed towards them from the time she pulled away to the time they stopped the vehicle a second time. PO Smith and SGT Diesso denied observing § 87(2)(b) make any waving gesture towards any individuals on the sidewalk. SGT Diesso became concerned with the obscene gesture causing a public disturbance since § 87(2)(b) was driving in a school zone. Therefore, because of SGT Diesso's concern that children may have been observing the obscene gesture, he instructed the officers to stop § 87(2)(b)'s vehicle again. PO Dyce approached the driver-side window and PO Smith approached the passenger-side window. SGT Diesso initially remained in the RMP.

When the officers reached the vehicle § 87(2)(b) began yelling and cursing at PO Dyce and refused to provide her identification. PO Dyce then instructed § 87(2)(b) to exit the vehicle, which she repeatedly refused. A crowd predominantly consisting of students began to gather and watch the incident. After a few moments SGT Diesso approached the driver-side of the vehicle to assist PO Dyce and observed § 87(2)(b)'s middle finger still out of the window. § 87(2)(a) 160.50

§ 87(2)(b) He told her that she could not act in such an obscene manner because there were children in the area. § 87(2)(b) admitted that her middle finger was up and continued to curse and yell. SGT Diesso denied observing § 87(2)(b) ask for an additional unit to come to the scene. After § 87(2)(b) continued to act in a combative nature SGT Diesso instructed PO Smith to walk over to the driver-side and assist them in arresting § 87(2)(b). Once he was on the other side, PO Smith observed that § 87(2)(b) was acting irate and uncooperative. However, PO Smith could not recall whether § 87(2)(b) was using obscene language. According to both SGT Diesso and PO Smith, § 87(2)(b) exited the vehicle of her own accord but then immediately attempted to walk away. After § 87(2)(b) ignored his repeated instructions to stop, PO Smith grabbed hold of her wrist. § 87(2)(b) then resisted by flailing her arms as PO Dyce and PO Smith attempted to handcuff her. After a moment, SGT Diesso assisted PO Dyce in pulling one of her hands behind her back so that she could be handcuffed. SGT Diesso denied that the officers pushed her against the vehicle but admitted that she was directly next to it while PO Smith admitted that it was necessary to lean her against her own vehicle. Because § 87(2)(b) initially refused to walk towards the RMP, PO Smith had to repeatedly instruct her to walk towards it. Eventually she complied so that they did not need to carry her. The officers denied using any unnecessary force in order to affect the arrest. Neither PO Smith nor SGT Diesso was aware of what happened to § 87(2)(b)'s cellular phone.

SGT Diesso and PO Dyce transported § 87(2)(b) to the 69th Precinct stationhouse while PO Smith transported § 87(2)(b)'s vehicle. PO Smith could not recall whether or not he observed a cellular phone in the vehicle. PO Smith denied searching the vehicle or removing either money or shoelaces from the vehicle. He further denied any knowledge regarding a search of the vehicle and the confiscation of money or shoelaces.

NYPD Documents

Roll Call: The 69th Precinct tour 1 & 2 roll calls do not indicate any of the officers as being assigned to Impact overtime on March 15, 2005. However, the roll calls may not indicate overtime tours and it is verified that the three officers were on duty at the time of the incident (Encl. 23-23K).

§ 87(2)(a) 160.50, § 87(2)(b)

§ 87(2)(a) 160.50, § 87(2)(b)

UF-61: Complaint Report #2005-069-01435 indicates that PO Dyce arrested § 87(2)(b) and that the occurrence started at 8:12AM and ended at 8:19AM on March 15, 2005. SGT Diesso was the supervisor on the scene (Encl. 18-18A).

Command Log: The command log indicates that § 87(2)(b) was brought into the 69th Precinct Stationhouse by PO Dyce at 8:28AM and transported to Central Booking at 1:40PM (Encl. 22-22B).

Subject Officer CCRB History

According to CTS, PO Dyce has one prior substantiated allegation from CCRB case #200409961 (Encl. 6). The substantiated allegation was abuse of authority-premises entered and/or searched. On February 28, 2005 the CCRB Board recommended charges in regards to this substantiated but the final NYPD disposition is unavailable at this date and time. SGT Diesso has three prior substantiated allegations from CCRB case #8804265 (Encl. 7-7A). The allegations of abuse of authority-other, abuse of authority-threat of summons and discourtesy-curse were substantiated and charges were recommended for each allegation.

Complainant History

A search of § 87(2)(b)'s NYSID in BADS found no prior arrests on record (Encl. 17). According to CTS, § 87(2)(b) has not filed any prior complaints with the CCRB (Encl. 8).

Conclusions and Recommendations

Undisputed Facts

It is undisputed that § 87(2)(b) was initially stopped for using her cellular phone while operating her vehicle and that PO Dyce issued her two summonses for using her cellular phone and being an unlicensed driver. After she was issued the summonses, she immediately drove off again and continued looking for parking. It is undisputed that § 87(2)(b) made some sort of gesture with her hand and was subsequently pulled over a second time by the same officers. § 87(2)(b) questioned the officers about why they had stopped her a second time and refused to cooperate with their instructions. The officers arrested her for disorderly conduct and used physical force to restrain and control her. § 87(2)(b) and her vehicle were then brought to the 69th Precinct stationhouse for processing.

Disputed Facts

Whether § 87(2)(b) made an obscene gesture is in dispute, as is the officers' motivation for stopping § 87(2)(b) the second time. § 87(2)(b) and the officers' subsequent conduct are also in dispute. It is disputed whether § 87(2)(b) exited the vehicle of her own accord or was physically removed by the officers. The legitimacy of the arrest is also in question. Finally, the force the officers used to affect the arrest is disputed, as is which officers used such force.

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Allegation A: SGT Douglas Diesso stopped § 87(2)(b) the vehicle in which § 87(2)(b) was an occupant.

The allegation is being pled against SGT Douglas Diesso because he was the supervising officer on the scene, and ultimately responsible for making the car stop. § 87(2)(b) alleged that the officers stopped her vehicle the second time for no legitimate reason and believed that it was done in retaliation for the sarcastic comment she made to PO Dyce after she was given the two summonses during the initial stop. § 87(2)(b) alleged that the only gesture she had made preceding the second stop was to curtly wave at her co-workers walking on the sidewalk. The three officers consistently alleged that they stopped § 87(2)(b)'s vehicle a second time after they observed § 87(2)(b) stick her left hand with her middle finger raised out the driver-side window for several minutes as they drove behind her. The officers followed § 87(2)(b) for several blocks before stopping her vehicle the second time. The officers alleged that since it was a school-zone and the obscene gesture was in plain view of pedestrians, SGT Diesso became concerned that she was causing public alarm. The officers were consistent in their assertion that SGT Diesso made the decision to stop § 87(2)(b)'s vehicle the second time in order to either issue her a summons or arrest her for disorderly conduct. In addition, SGT Diesso stated that he also observed § 87(2)(b) make an illegal left-hand turn. However, neither PO Smith no PO Dyce corroborated this statement.

An officer may stop a vehicle to investigate criminal activity when he has a reasonable cause that its occupants have been engaged in conduct in violation of the law (Kamins pg. 392, Encl. 3). Absent reasonable cause, a stop constitutes an impermissible seizure of the vehicle's occupants. The officers alleged that § 87(2)(b) was acting in a disorderly manner. However, People v. Munafo, 50 N.Y.2d 326 (1980) and People v. Palmer, 176 Misc.2d 813 (N.Y. Crim. Ct. 1998) found that conduct proscribed by the disorderly conduct statute must involve situations which are carried beyond the concern of individual disputants to a point where they become a potential or immediate problem (Encl 1-1D & 2-2D). In this

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Allegation B: SGT Douglas Diesso used physical force against § 87(2)(b)

Allegation C: PO Lashonda Dyce used physical force against § 87(2)(b)

§ 87(2)(b) alleged that PO Dyce placed her under arrest for refusing to cooperate with their demands. She alleged that she only asked the officers to explain why they stopped her the second time. Once it became apparent that they would not explain the purpose for the second stop, she then requested that they call another unit to the scene. § 87(2)(b) denied raising her voice or using any obscenities while she spoke with the officers. She admitted that she refused to cooperate, but only until they either explained what was going on or requested another unit to the scene. Once the officers took hold of her hands, she passively resisted by going limp and telling the officer to "wait a minute." The officers pulled her out the vehicle by her hands and held her against the side of her vehicle so that she could be handcuffed.

§ 87(2)(a) 160.50, § 87(2)(b). PO Dyce alleged that § 87(2)(b) screamed and cursed at the officers when they attempted to explain why she had been stopped again, thereby creating a public disturbance. PO Smith and SGT Diesso corroborated PO Dyce's allegation that § 87(2)(b) had raised her voice and refused to obey lawful orders, thereby creating a public disturbance. SGT Diesso also confirmed PO Dyce's allegation that § 87(2)(b) used obscenities while PO Smith could not recall whether or not § 87(2)(b) used obscenities. § 87(2)(b) alleged that, after she refused to exit the vehicle, SGT Diesso unlocked the driver-side window from the inside and both he

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Date: